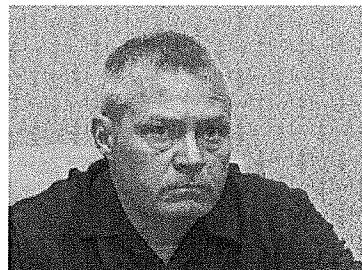


Exhibit 12
Deposition transcript of Timothy Bakke

*Courtney Jayne v.
City of Sioux Falls*

Timothy Bakke
April 30, 2019



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reporting

Min-U-Script® with Word Index

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| <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION</p> <p style="text-align: center;">= = = = =</p> <p>COURTNEY JAYNE, Individually and as Personal Representative of the ESTATE of M.Z.,</p> <p style="text-align: center;">Plaintiff, vs. Case No. 4:18-CV-4088-KES</p> <p style="text-align: center;">CITY OF SIOUX FALLS,</p> <p style="text-align: center;">Defendant.</p> <p style="text-align: center;">= = = = =</p> <p>Videotaped Deposition of: TIMOTHY BAKKE Date: April 30, 2019 Time: 9:27 a.m.</p> <p style="text-align: center;">= = = = =</p> <p>APPEARANCES</p> <p>Mr. Anthony J. Schrank Robins Kaplan, LLP Minneapolis, Minnesota</p> <p style="text-align: center;">Attorney for the Plaintiff</p> <p>Mr. James E. Moore Woods, Fuller Shultz & Smith, P.C. Sioux Falls, South Dakota</p> <p style="text-align: center;">and</p> <p>Ms. Karen Leonard Sioux Falls City Attorney's Office Sioux Falls, South Dakota</p> <p style="text-align: center;">Attorneys for the Defendant</p> <p>REPORTED BY: Audrey M. Barbush, RPR</p> <p>VIDEOGRAPHER: Jeff Lambert</p> | <p style="text-align: center;">STIPULATION</p> <p>1 It is hereby stipulated and agreed by and between the 2 above-named parties through their attorneys of record, whose 3 appearances have been hereinabove noted, that the videotaped 4 deposition of TIMOTHY BAKKE may be taken at this time and 5 place, that is, at the offices of Woods, Fuller, Shultz & 6 Smith, P.C., 300 South Phillips Avenue, Suite 300, 7 Sioux Falls, South Dakota, on the 30th day of April, 2019, 8 commencing at the hour of 9:27 a.m.; said deposition taken 9 before Audrey M. Barbush, a Registered Professional Reporter 10 and Notary Public within and for the State of South Dakota. 11 Objections, except as to the form of the question, are 12 reserved until the time of trial. Insofar as counsel are 13 concerned, the reading and signing of the transcript by the 14 witness is waived.</p> <p>15 -oOo-</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
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| <p>1 I N D E X</p> <p>2 Examination: Page</p> <p>3 By Mr. Schrank 5</p> <p>4 Exhibit Nos.: Page</p> <p>5 Exhibit 30 - Photograph 16</p> <p>6 Exhibit 31 - Police report, CITY 00002-00009 23</p> <p>7 Exhibit 32 - Police report, Page 8 of 8 36</p> <p>8 -ooo-</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 THE VIDEOGRAPHER: We are now on the record. 2 The deposition of Tim Bakke is being taken on 3 April 30, 2019, commencing at approximately 9:27, at 4 the location of Woods, Fuller, Shultz & Smith, P.C., 5 300 South Phillips Avenue, Sioux Falls, South Dakota. 6 This deposition is taken in the matter of 7 Courtney Jayne, individually and as personal 8 representative of the Estate of M.Z., plaintiff, vs. 9 City of Sioux Falls, defendant, venued in United States 10 District Court, District of South Dakota, Southern 11 Division, Case No. 4:18-CV-4088-KES. 12 Starting with the noticing party, would all 13 present please voice-identify yourself and who you 14 represent. 15 MR. SCHRANK: Tony Schrank on behalf of 16 Courtney Jayne. 17 MR. MOORE: James Moore on behalf of the City of 18 Sioux Falls. 19 MS. LEONARD: And I'm Karen Leonard on behalf of 20 the City of Sioux Falls. 21 THE VIDEOGRAPHER: Our court reporter is 22 Audrey Barbush. 23 Would you please swear the witness. 24</p> |

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| <p>1 TIMOTHY BAKKE, 2 called as a witness, having been first duly sworn, 3 testified as follows: 4 EXAMINATION 5 BY MR. SCHRANK: 6 Q Sir, please state your name. 7 A Timothy Bakke, B-a-k-k-e. 8 Q Mr. Bakke, my name is Tony Schrank, as I previously 9 mentioned and introduced myself to you before this 10 deposition. I represent Courtney Jayne in this matter. 11 You understand you're here today for a deposition, 12 true? 13 A Yes, sir. 14 Q Have you ever given a deposition before, Mr. Bakke? 15 A No. 16 Q So then before we get going, I'll just go through a 17 couple ground rules to make this go as quickly, 18 efficiently as possible. As you can see, everything is 19 being taken down by a court reporter. In order for us 20 to have a nice clear transcript at the end of this, if 21 we could just talk one at a time so that she can get 22 everything down. Not only for that, but just also for 23 general courtesies as well. Please give me that 24 courtesy, and I'll do the same for you. Fair? 25 A Yes, sir.</p> | <p>1 A Four active, three reserve. 2 Q Thank you. 3 What years did you -- were you no longer with the 4 US Army after the three reserve? 5 A '89. 1989. 6 Q And then after 1989 what did you do for employment or 7 education? 8 A Starting in 1988, I worked at Lewis Drug -- it's a 9 local store -- as a loss prevention manager. 10 Q What's the duties of a loss prevention manager for a 11 drugstore? 12 A It's external and internal theft prevention. 13 Q Did you do any type of risk analysis for the premises 14 of the drugstore with regard to personal injury? 15 A No. 16 Q And then after you had that job, what was your 17 employment after that? 18 A Sioux Falls Police Department. 19 Q What year did you join the Sioux Falls Police 20 Department? 21 A January of 1995. 22 Q Are you still currently employed with the Sioux Falls 23 Police Department? 24 A Yes. 25 Q Have you been continuously employed with the</p> | | |
| | Page 6 | | Page 8 |
| <p>1 Q Please answer -- as you can see, everything is being 2 taken down. We need answers -- audible answers, and 3 that's so we can have an answer on the record. 4 A Yes, sir. 5 Q If you don't understand a question I'm asking you, let 6 me know and I'll rephrase it. If I ask you a question 7 and you answer it, we're going to assume that you 8 understood what I was asking you. Okay? 9 A Yes, sir. 10 Q If you need a break at any time, let me know. But I do 11 believe this will be pretty short. But if you do need 12 a break, just let me know. 13 A Yes, sir. 14 Q Mr. Bakke, I just want to know a little bit about your 15 background briefly. 16 Where did you go to high school? 17 A Washington High School, Sioux Falls. 18 Q And where did you -- did you go to college? 19 A No. 20 Q When did you first become employed after high school? 21 A I was employed during high school. 22 Q After high school, what was your first job, even if it 23 started during high school? 24 A US Army. 25 Q And how many years were you in the US Army for?</p> | <p>1 Sioux Falls Police Department from 1995 until current 2 day? 3 A Yes. 4 Q Thank you, sir. 5 And when you were hired in 1995, what role were 6 you hired as? 7 A Patrol officer. 8 Q How long were you a patrol officer for? 9 A Until March of 2014. 10 Q Thank you. 11 And then what did your role become in March of 12 2014? 13 A I moved to the detective bureau. 14 Q And what was your role in the detective bureau? 15 A I work in the crimes against persons section. 16 Q Just briefly, what is the crimes against persons 17 section? 18 A We investigate all unattended deaths, from homicide, 19 suicides, natural deaths, a death that isn't witnessed 20 by a doctor. We also investigate sex crimes, including 21 rapes, child sex crimes, internet crimes against 22 children. We investigate assaults, both felony and 23 misdemeanor assaults, as well as missing persons. And 24 we also run the sex offender registry for Minnehaha 25 County.</p> | | |

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| <p style="text-align: right;">Page 9</p> <p>1 Q Thank you, sir.</p> <p>2 And when you were hired into the detective bureau,</p> <p>3 what is your title when you were hired in March of</p> <p>4 2014?</p> <p>5 A Simply detective.</p> <p>6 Q Detective, perfect. So in your role as a detective,</p> <p>7 did you investigate the drowning of Maggie Zaiger that</p> <p>8 occurred on March 18, 2018?</p> <p>9 A I did.</p> <p>10 Q So when did you first hear about Maggie Zaiger's</p> <p>11 drowning?</p> <p>12 A It would have been around 1:30 p.m. that Saturday,</p> <p>13 March 18th.</p> <p>14 Q And who informed you of it?</p> <p>15 A One of my supervisors, Sergeant Kooistra.</p> <p>16 Q And was that protocol for a supervisor to reach out to</p> <p>17 you and then for you to investigate -- or go to</p> <p>18 investigate the scene of a death?</p> <p>19 A Yes.</p> <p>20 Q And at that time did you and your supervisor know that</p> <p>21 it was a death?</p> <p>22 A When I received the call, I believe I was told that she</p> <p>23 had died at the hospital, yes.</p> <p>24 Q When you received that call, then, what was your next</p> <p>25 action in regard to investigating the death? Did you</p> | <p style="text-align: right;">Page 11</p> <p>1 Maggie falling in.</p> <p>2 Q Did she provide you any facts about where she was when</p> <p>3 Maggie fell into the river?</p> <p>4 A Yes.</p> <p>5 Q And what were those? What did she tell you?</p> <p>6 A She felt she was around 10 feet or so from Maggie,</p> <p>7 standing on the rocks, and was slightly turned away</p> <p>8 from the children.</p> <p>9 Q Did she tell you why she was slightly turned away or</p> <p>10 what she was doing at the time that Maggie fell in?</p> <p>11 A Not that I recall.</p> <p>12 Q Was there anything else about that conversation with</p> <p>13 Courtney that you didn't already mention, that you can</p> <p>14 recall?</p> <p>15 A She did tell me that she is, I believe, blind in the</p> <p>16 left eye and partially blind in the right eye.</p> <p>17 Q Thank you.</p> <p>18 Anything else?</p> <p>19 A That's all I recall with Courtney.</p> <p>20 Q Thank you, sir.</p> <p>21 And then with Crissy, what did that discussion</p> <p>22 entail?</p> <p>23 A Basically the same positions. She put herself 10 to</p> <p>24 15 feet from the children. She said that they had gone</p> <p>25 down there to look at the foam and that they were going</p> |
| <p style="text-align: right;">Page 10</p> <p>1 go to Falls Park?</p> <p>2 A I was at home; so my first stop was McKennan Hospital.</p> <p>3 Q And why did you go to the hospital?</p> <p>4 A That's where Maggie and the family were.</p> <p>5 Q And did you speak with anybody at the hospital?</p> <p>6 A I did.</p> <p>7 Q And those conversations were as part of your</p> <p>8 investigation?</p> <p>9 A Yes.</p> <p>10 Q Who did you speak with, sir?</p> <p>11 A I spoke with Courtney, also Crissy. I also spoke with</p> <p>12 Jeremy.</p> <p>13 Q So you spoke with Courtney, Crissy, and Jeremy at the</p> <p>14 hospital?</p> <p>15 A Yes.</p> <p>16 Q What did Court- -- how long were the conver- --</p> <p>17 strike that.</p> <p>18 How long were you at McKennan Hospital for?</p> <p>19 A Approximately an hour.</p> <p>20 Q Thank you.</p> <p>21 And what did Courtney tell you about the incident?</p> <p>22 A Just that they had been visiting from Iowa; had spent</p> <p>23 the weekend, I believe, at a hotel; had decided to go</p> <p>24 to Falls Park; and went to the observation tower and</p> <p>25 eventually down to the rocks by the river just prior to</p> | <p style="text-align: right;">Page 12</p> <p>1 to attempt to have a group picture in front of the foam</p> <p>2 with the old mill behind them. She did take a couple</p> <p>3 pictures just prior to Maggie falling in. That was her</p> <p>4 basic recollection, as well as beating the foam with</p> <p>5 her coat after she knew Maggie went in.</p> <p>6 Q And you received copies of the photographs that Crissy</p> <p>7 took, true?</p> <p>8 A Two of them, yes, sir.</p> <p>9 Q And your conversation -- did you say with Jeremy?</p> <p>10 A Yes.</p> <p>11 Q What did that conversation entail?</p> <p>12 A It was basically about what happened prior to going in</p> <p>13 as well. There was conversation about them getting to</p> <p>14 Falls Park and that there had been some arguing between</p> <p>15 Courtney and Crissy because they couldn't find the</p> <p>16 entrance to Falls Park. Eventually they went down by</p> <p>17 the foam, and Jeremy did see Maggie go into the water.</p> <p>18 Q Did Jeremy say what Maggie was doing immediately before</p> <p>19 she went into the water?</p> <p>20 A She was reaching out to touch the foam.</p> <p>21 Q And then as she reached in, did she -- let me rephrase</p> <p>22 this question. Did Jeremy tell you that as she reached</p> <p>23 into the foam, she fell forward into the foam?</p> <p>24 A Yes.</p> <p>25 Q And then that's when she was last seen --</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 A Yeah. 2 Q -- before she was recovered, true? 3 A True. 4 Q Did you also take photographs of Maggie at the hospital? 5 A Actually, Marc Toft, with our identification section, took the pictures. I assisted in examining Maggie. 6 Q What was the purpose for your investigation into this matter? 7 A As far as the overall scope -- 8 Q Yeah, as far as -- 9 A -- of the investigation? 10 Q -- the overall. Yeah. 11 A Just simply an unattended death investigation, to gather the facts in regards to how this happened. 12 Q To gather the facts with regard to how this happened. 13 A And then what do you do with your investigation? Do you forward it to somebody once you've gathered the facts? 14 A I did. 15 Q Generally, not just for this instance, but who do you forward these -- your investigation of the facts to? 16 A The facts will go to the coroner, the Minnehaha County coroner, as well as I did consult with Aaron McGowan, the Minnehaha County state's attorney, in regards to</p> | <p style="text-align: right;">Page 15</p> <p>1 A Falls Park. 2 Q When you got to Falls Park, approximately what time was that? 3 A That would have been probably around 3:00 p.m. or so. 4 Q Who was on the scene at that time? 5 A Officer Eilers was there. 6 Q And were fire and rescue there? 7 A I don't believe they were there anymore. 8 Q Because Maggie had already been rescued and brought to the hospital? Is that why they weren't there anymore? 9 A Yes. 10 Q And so when you got to Falls Park, what did you do to investigate? 11 A I simply looked at the area where I believed Maggie went in, and also walked the area with Officer Toft as he photographed the scene. 12 Q You said that you -- I apologize, I might misstate, but you said something along the lines of you identified the area where you believe Maggie fell in. Is that true? 13 A Yes. 14 Q I'm going to -- I have a photograph of Falls Park, that west bank. If you could -- I'm going to ask you, once I find it, if you could put an X in the approximate area where you believe Maggie Zaiger fell in.</p> |
| <p style="text-align: right;">Page 14</p> <p>1 the case. 2 Q Because there's often times when you investigate cases where there needs to be a criminal prosecution because of a death; is that true? 3 A That can happen. 4 Q But this wasn't one of them? 5 A Mr. McGowan declined to move forward with anything. 6 Q This incident was investigated and deemed an accidental death, not a criminal, true? 7 A By the coroner, yes. 8 Q And so your -- you said that Officer Toft took some photographs of young Maggie at the hospital? 9 A Yes. 10 Q What was the purpose of obtaining those photographs? 11 A It's simply a cursory view and photographs of the body to avoid any changes that may occur over time before the coroner can actually examine her. 12 Q Other than these three conversations and you and the other officer -- or the other officer taking photographs, did anything else at the hospital happen regarding the investigation of this death? 13 A No. 14 Q And so then after you're at the hospital, where did you go in regard to the investigation? What was the next step?</p> | <p style="text-align: right;">Page 16</p> <p>1 MR. SCHRANK: And if you could please mark this Exhibit No. 30, Ms. Court Reporter. 2 (Exhibit 30 is marked for identification.) 3 BY MR. SCHRANK: 4 Q Sir, I'm going to hand you a red pen. And with this red pen could you please put an X in the area where you believe Maggie was immediately before she fell in, on Exhibit No. 30. 5 A Yes, sir. 6 Q And there is some language on Exhibit No. 30 that says "Approximate area where Maggie fell in." That was added by plaintiff. 7 A But I'd like you, with that red pen, to put an X in the area where you believe Maggie fell in. 8 Q It's difficult with this covering what I believe to be elevation in the rock, but I believe it's in this area. 9 A (Indicating.) 10 Q Thank you, sir. 11 A Uh-huh. 12 Q MR. MOORE: Can I just see that, please. 13 (Examines document.) 14 BY MR. SCHRANK: 15 Q And, sir, how did you -- why do you think that she fell in in that area? 16 A I don't know why.</p> |

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| <p style="text-align: right;">Page 17</p> <p>1 Q What do you base that belief off of?</p> <p>2 A From the picture?</p> <p>3 Q Yes.</p> <p>4 A Once again, hard to tell with elevation and the water where it's at, but I believe based on where the rocks ended and the dirt shoreline begins, that's an approximate area. It's not an X-marks-the-spot moment, but it's an approximate area.</p> <p>5 Q So it could be 10 yards north or south of that X area where you marked?</p> <p>6 A It could be.</p> <p>7 Q Could it be 20 yards from that X marked area, north and south?</p> <p>8 A It could be. A different picture from a view looking east would be easier for me to recognize. But that's the general area.</p> <p>9 Q Do you have any reason to believe or have any facts that contradict the idea that she fell in more north, to the left of the "Approximate location where Maggie fell in" --</p> <p>10 A No.</p> <p>11 Q -- on <u>Exhibit No. 30</u>?</p> <p>12 A Once again, elevation here is different. From looking above it, it's difficult to tell, what I would picture a benchmark as a large rock outcropping that would have</p> | <p style="text-align: right;">Page 19</p> <p>1 A Yes.</p> <p>2 Q And is that because of that rock raised to the right of the officer in Photograph No. 22?</p> <p>3 A Yes.</p> <p>4 Q And that's why it's difficult to put an X on Exhibit No. 30 is because you can't see the elevation, as you previously mentioned?</p> <p>5 A Yes, sir.</p> <p>6 Q Understood. Thank you.</p> <p>7 A So you went to Falls Park -- and I apologize. I need to backtrack. What did you do at Falls Park when you went there to investigate?</p> <p>8 A Once again, went to the area where I believed Maggie had gone in and also assisted Officer Toft in photographs as he went around the river.</p> <p>9 Q What were those photographs of?</p> <p>10 A Those photographs would have been of the area where we believed Maggie was standing, as well as downstream to the north; and I believe Officer Toft also went across to the east bank in the area where it was believed Maggie was recovered.</p> <p>11 Q And, sir, I'm going to hand you No. 17. It's previously been marked <u>Exhibit No. 17</u>.</p> <p>12 A Have you ever seen that photograph before?</p> <p>13 A Not that I recall.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 Q Thank you, sir.</p> <p>2 A Who told you about where she fell in, that you base this belief on?</p> <p>3 A Part of it would be from Crissy and the pictures that she shared of Jeremy and the other girls near that area, and then standing there, looking to the east.</p> <p>4 Q This has been previously been marked <u>Exhibit No. 22</u>.</p> <p>5 A Mr. Bakke.</p> <p>6 Q Have you ever seen this photo before?</p> <p>7 A I don't -- I don't recall.</p> <p>8 Q Was this a photo that you took in your investigation?</p> <p>9 A It's not a photo that I took, no.</p> <p>10 Q And that's not you in the photo --</p> <p>11 A No.</p> <p>12 Q -- true?</p> <p>13 A No.</p> <p>14 Q Sorry. That was a double negative. I phrased that incorrectly.</p> <p>15 Q Is that you in the photo?</p> <p>16 A No, sir.</p> <p>17 Q Thank you.</p> <p>18 A Is this the area or the spot where you believe Maggie fell in?</p> | <p style="text-align: right;">Page 20</p> <p>1 Q When you said that you went downstream and took photographs looking up at the river, is this one that was taken? Do you know?</p> <p>2 A This would have been one that was taken I believe by Officer Toft.</p> <p>3 Q While you were with him?</p> <p>4 A I was in that area.</p> <p>5 Q Is that you in the photograph <u>Exhibit No. 17</u>?</p> <p>6 A No. I'm not uniformed.</p> <p>7 Q Looking at <u>Exhibit No. 17</u>, can you see the area where you believe Maggie fell in, on <u>Exhibit No. 17</u>?</p> <p>8 A No.</p> <p>9 Q Thank you.</p> <p>10 A What else was done at Falls Park when you visited on March 18, 2018, for your investigation?</p> <p>11 A Nothing more.</p> <p>12 Q How long were you at Falls Park for?</p> <p>13 A Approximately an hour.</p> <p>14 Q When you were at Falls Park, the area where Maggie fell in -- where you believed she fell in, how many feet in foam did the foam exceed the riverbank where Maggie fell in?</p> <p>15 A I believe I put in my report around 20 feet. That's an approximation.</p> <p>16 Q And that's from the river up to the top of the foam,</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 true? 2 A Yes. 3 Q Thank you. 4 How many feet above the rocks where Maggie fell in 5 did that 20 feet of foam exceed the rock? 6 A From where she stood, the foam worked upwards. It 7 ended at the rocks and worked upwards; so I'm not sure 8 of an exact measurement. 9 Q So at the area of the rocks where she was standing at 10 the edge of the visible rocks, how many inches of foam 11 was in front of her? 12 MR. MOORE: I'll just object to form. 13 BY MR. SCHRANK: 14 Q You can answer. 15 A Once again, where she was standing, it covered the rock 16 and began to move upward; so I have a difficult time 17 giving any measurement, if that makes sense. 18 Q Understood. 19 Where that foam began to obscure the rocks, how 20 many feet of rocks were there from where that foam 21 started to where the rocks ended? 22 A I couldn't see that. 23 Q Did you, later on, make an opinion on that? 24 A Not on how many feet out the rocks were covered by the 25 foam, no.</p> | <p style="text-align: right;">Page 23</p> <p>1 was no rock underneath that step. 2 Q And where she stepped in was obscured by foam? 3 A Yes. 4 MR. SCHRANK: Ms. Court Reporter, could you please 5 mark this <u>Exhibit No. 31</u>. 6 (<u>Exhibit 31</u> is marked for identification.) 7 BY MR. SCHRANK: 8 Q Sir, I'm handing you what's been marked <u>Exhibit No. 31</u>. 9 I will ask you generally what this document is, but 10 your attention will be mostly on pages 5 -- CITY 5 to 11 CITY 9. 12 A This would be the portions of the police report that 13 were completed by myself as well as other officers that 14 were there. 15 Q And, Mr. Bakke, looking at CITY 5, about three quarters 16 of the way down, it says "Supplement Narrative by 17 Timothy Bakke, 3/18/18 16:29." And then there's 18 content from CITY 5 through CITY 6, through CITY 7, and 19 then ending on CITY 8. 20 Is that content from CITY 5, ending on CITY 8, 21 authored by you? 22 A Yes. 23 Q And then there's also content on CITY 9, where it 24 starts "Supplement Narrative by Timothy Bakke, 3/19/18 25 11:43."</p> |
| <p style="text-align: right;">Page 22</p> <p>1 Q Did you, later on, make an opinion how high the foam 2 was where she was standing? 3 A Once again, I'm not sure... 4 Q Do you believe that Maggie was able to see the river, 5 where she was standing, immediately before she fell in? 6 A No. 7 Q Why not? 8 A It was obscured by foam. 9 Q Do you believe that Maggie was able to hear the river 10 where Maggie -- while she was standing, right before 11 she fell in? 12 A No. 13 Q And why not? 14 A The Falls to the south were obscured by the tall rock 15 outcropping. 16 Q What's your -- you know, after this investigation -- 17 and I'll hand you a copy of the report in a second. 18 After this investigation, you added narratives to 19 a report, and you basically came up with a theory about 20 what happened in this incident, true? 21 A As far as the fall? 22 Q As -- yes, as far as what happened to Maggie. 23 A Yes. 24 Q And what was that theory? 25 A That she had reached for foam and took a step and there</p> | <p style="text-align: right;">Page 24</p> <p>1 You see that, true? 2 A Yes. 3 Q From there to the end of CITY 9, is that content 4 authored by you? 5 A Yes. 6 Q So you did your investigation, and then you put the 7 facts that you found in the investigation in this 8 document, true? 9 A Yes. 10 Q Looking at CITY 6, the fourth paragraph from the 11 bottom, the one that begins with "I talked with all the 12 parties present..." 13 A Yes, sir. 14 Q The last sentence of that paragraph says "In the 15 background, as the picture of Jeremy is taken, you can 16 see the old mill across the river and the large amount 17 of foam which appears to be, in some places, 20 to 18 30 feet high." 19 You see that, true? 20 A Yes. 21 Q That 20 to 30 feet high, is that in the middle of the 22 foam, or was that on the east bank of the foam? 23 A My recollection would be it rolls, and that was -- 24 towards the east bank would have been the highest. 25 Q So it was a continuous slope to the east bank -- the</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 foam was a continuous slope to the east bank; it was 2 not a round mound with the highest part being in the 3 middle of the river? 4 A It sloped upwards. 5 Q And where it sloped upwards at its height near that 6 east bank, was that 20 to 30 feet high from where you 7 were standing on the rock bed, or is that 20 to 30 feet 8 high from the river base? Approximate. 9 A Approximately -- that rock bed is not that far from a 10 dirt shoreline just to the north. So it's fairly close 11 to that level, yes. 12 Q Do you know how high the rock bed where Maggie fell in 13 was to the river bed when she fell in, in feet? 14 A From the rock where I believe she was standing to where 15 the river began? 16 Q To where the river was when she fell in. 17 A It was approximately 3 to 4 feet above the water. 18 Q And how do you know that? 19 A The next day, supervisors went out to the scene and 20 took pictures and video of that spot, and the foam had 21 receded. 22 Q And if you look at CITY 8, the paragraph that starts 23 with "It is my intention at some point when the foam 24 from runoff..." 25 And then the next sentence says "If you go</p> | <p>1 Falls -- the rocks as she fell forward? 2 A I can't tell you a hundred percent for sure. But that 3 was a fresh abrasion. I can't tell you a hundred 4 percent it came from a fall forward. It could have 5 happened five minutes before, playing on the rocks. 6 But it was a fresh abrasion. It would potentially lend 7 to a theory. 8 Q And it lended to the theory that you developed in this 9 document, true? 10 A Yes. 11 Q Looking at the second to last paragraph -- 12 A On CITY 8? 13 Q On CITY 7. 14 A I'm sorry. 15 Q I apologize. I should have noted that before. 16 A Yes, sir. 17 Q The last paragraph says "As you stand --" the last 18 sentence says "As you stand in a position where I 19 believe the children were actually standing before 20 Maggie went in, it is very calm, quiet, and serene." 21 A Yes, sir. 22 Q It reads that, true? 23 A Yes, sir. 24 Q So on March 18, 2018, you went to the position where 25 you believe she fell in, and it was significant that</p> |
| <p style="text-align: right;">Page 26</p> <p>1 upstream a little bit from the rocks, there appears to 2 be a 5- to 10-foot drop in some areas there and there 3 is nothing at this point to lead me to believe that 4 there is not a drop from the rocks into the river where 5 Maggie was playing and grabbing at the foam." 6 It reads that, true? 7 A Correct. 8 Q So it says there that there's a 5- to 10-foot drop in 9 some areas. What were you describing to be a 5- to 10 10-foot drop? 11 A That would have been on the rock cropping above where 12 she was standing, where you could see the river, 13 looking down. 14 Q And you also used some of the photographs that were 15 obtained at the hospital to support the theory that's 16 in this document, true? 17 A As far as the fall forward? 18 Q Yes. 19 A Yes. 20 Q What photographs and what on the photographs support 21 your theory that she fell forward? 22 A It would have been the abrasion on her left shin area 23 below the knee. 24 Q So is it your position that she fell forward into the 25 Falls and then her left shin area somewhere hit the</p> | <p>1 you noted it was very calm, quiet, and serene? 2 A Yes. 3 Q And why -- why put that in this report? Why is that 4 notable? 5 A I felt it was best to try and depict what Maggie had 6 seen prior to going in the water. 7 Q What do you believe she did see before going into the 8 water? 9 A Foam. 10 Q And no river. 11 A The river wasn't visible, no. 12 Q Looking at CITY 8, the first paragraph that starts with 13 "It is my intention at some point." The last 14 sentence -- I'll read the last two sentences. 15 It says "If you go upstream a little bit from the 16 rocks, there appears to be a 5- to 10-foot drop in some 17 areas there, and there is nothing at this point to lead 18 me to believe that there is not a drop from the rocks 19 into the river where Maggie was playing and grabbing at 20 the foam. However, once again, these were obscured 21 rocks due to the high level of runoff and foam itself." 22 It reads that, true? 23 A Yes. 24 Q The part that says "these were obscured rocks due to 25 the high level of runoff and foam itself," what rocks</p> |

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| <p style="text-align: right;">Page 29</p> <p>1 were you talking about that were obscured? 2 A The rocks that she was standing on, and the foam -- the 3 edge of the rocks were obscured. 4 Q And so is it your opinion that young Maggie bent down 5 to reach for the foam? 6 A I'm not sure about that. 7 Q Did anyone -- in your investigation do you have any 8 reason to believe that she reached out towards the foam 9 versus reaching down? 10 A I believe Jeremy said she was reaching for the foam. 11 Q But she could have been reaching down for the foam or 12 out for the foam. 13 A Possible. 14 Q Thank you, sir. 15 And then if you look at CITY 9, the -- I guess the 16 fourth from last paragraph, the one that starts "In 17 that picture which was also scanned." 18 A Yes. 19 Q It says "It appears --" the second sentence reads "It 20 appears that rocks can be seen in this photograph 21 approximately 3 to 4 feet down from where Maggie would 22 have been standing. So once again this would lend to 23 the theory that as was Maggie was grabbing at the foam 24 on the 18th, she took a step forward onto what she 25 thought would probably be another rock and there was</p> | <p style="text-align: right;">Page 31</p> <p>1 A I believe I probably had many theories, but... 2 Q Were any alternative theories in any documentation that 3 you provided in the investigation of this death? 4 A No. 5 Q If it was an alternative theory -- strike that. 6 Then if you look at the second to last paragraph, 7 the one that starts with "Once again, in all the 8 pictures that were taken today..." on CITY 9. The last 9 portion -- the last half of that paragraph reads "It 10 should once again be noted that when I was at the Falls 11 yesterday, which would be much more representative of 12 what Maggie was seeing before she went in the water, 13 that foam was up to the shoreline and it was impossible 14 to see that the rocks fell away 3 to 4 feet from where 15 she was standing. There was no water that was able to 16 be seen from where she was standing; and, once again, 17 the noise from the Falls was not able to be heard and 18 the current was not able to be seen from where Maggie 19 was standing when she went in the water itself." 20 It reads that, true? 21 A True. 22 Q And you wrote that, true? 23 A Yes. 24 Q Why did you reiterate that, once again, the noise was 25 not able to be heard, the current was not able to be</p> |
| <p style="text-align: right;">Page 30</p> <p>1 indeed not a rock there and she fell at least 3 or 2 4 feet before entering the water face-first." 3 It reads that, true? 4 A Yes. 5 Q And that's what you believe to have happened in this 6 incident? 7 A Based on the pictures taken the next day with the drop 8 off the rock, I believed that that was a possibility. 9 It was lending to a theory -- my theory. 10 Q And you only have one theory in this document, true? 11 A Correct. 12 Q And you only have one theory in all of your 13 investigation, not just this document, about how Maggie 14 fell in, true? 15 A My theory was face-first, but I can't tell you that 16 that's exactly how. I don't know -- the rocks were 17 obscured -- if she took a step and stumbled. I don't 18 know that. I do know she went into the water. 19 That was my working theory, though, yes. 20 Q And you also knew that she had abrasions on her left 21 shin which would also support the only theory in this 22 document, that she fell forward face-first about 3 or 23 4 feet and then entered the water. 24 A It didn't lend against the theory. 25 Q Did you have any alternative theories?</p> | <p style="text-align: right;">Page 32</p> <p>1 seen, and the river -- you couldn't see the water 2 because of the foam? 3 A Why did I reiterate that? 4 Q Yeah. I mean, respectfully, it says "once again." 5 A Because I tend to say everything twice. It's the same 6 thing that was said before, but... 7 Q You kind of wanted to recap what happened? 8 A Yes. 9 Q In your view, were those significant facts in this 10 investigation? 11 A They were. 12 Q And why was that? 13 A Once again, trying to find out how she went in the 14 water; so that makes that significant. 15 Q If you could look at CITY 7, sir, the last paragraph. 16 The second sentence reads "It appears to be a very 17 heavy current; and, once again, this is not viewable 18 from where the children were standing basically down 19 off the rocks or towards the corner of the rocks 20 downstream from where the current is." 21 It reads that, true? 22 A True. 23 Q And you wrote that, true? 24 A Yes. 25 Q The very heavy current, where is that relative to the</p> |

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| <p style="text-align: right;">Page 33</p> <p>1 area where Maggie fell in?</p> <p>2 A It would have been to their right, or the south, up on</p> <p>3 top of the rock outcropping above them.</p> <p>4 Q And that heavy current was not viewable because of the</p> <p>5 foam?</p> <p>6 A From where she was standing?</p> <p>7 Q Yes.</p> <p>8 A It would have been visible prior, but where she's</p> <p>9 standing at the moment she goes in, no.</p> <p>10 Q Did anybody at the hospital inform you how the group --</p> <p>11 Maggie, Courtney, Crissy, the other children -- got to</p> <p>12 the area where Maggie fell in?</p> <p>13 A I believe they went from the observation tower -- if</p> <p>14 that's what you're asking, from the observation tower</p> <p>15 down to the rocks.</p> <p>16 Q Did they show you their path -- you were never on the</p> <p>17 scene of Falls Park with any of the family members or</p> <p>18 friends, true?</p> <p>19 A True.</p> <p>20 Q Do you know the path they took from the observation</p> <p>21 tower down to the area?</p> <p>22 A No.</p> <p>23 Q And you previously mentioned that there was some</p> <p>24 argument about trying to find the entrance to Falls</p> <p>25 Park. That was argument about finding the drivable</p> | <p style="text-align: right;">Page 35</p> <p>1 A I don't have an opinion on that.</p> <p>2 Q But it was a fact that you noted in your investigation,</p> <p>3 true?</p> <p>4 A The foam was noted, yes.</p> <p>5 Q When you went to Falls Park the day after the incident,</p> <p>6 who were you with?</p> <p>7 A I didn't go the day after. My supervisors did.</p> <p>8 Q Oh, and your supervisors provided you with photos that</p> <p>9 you reviewed, true?</p> <p>10 A Yes, sir.</p> <p>11 Q Do you have any role in rescue efforts in a drowning</p> <p>12 like this?</p> <p>13 A No.</p> <p>14 Q Then you don't have an opinion whether or not a fence</p> <p>15 would impede a rescue effort in an area like this where</p> <p>16 Maggie fell in?</p> <p>17 A I don't.</p> <p>18 Q In your capacity as detective, do you ever work with</p> <p>19 the City's risk management department?</p> <p>20 A I will send them City case reports where there's been</p> <p>21 City damage. Just sending emails.</p> <p>22 Q What's the purpose of that?</p> <p>23 A If, for instance, an officer kicks a door in, a case</p> <p>24 report's generated; and risk management obviously wants</p> <p>25 to know that.</p> |
| <p style="text-align: right;">Page 34</p> <p>1 entrance to Falls Park, true?</p> <p>2 A Yes, sir.</p> <p>3 Q So there was no argument, that you're aware of, at</p> <p>4 Falls Park about trying to find an entrance once they</p> <p>5 actually got out of their car and were at the Falls.</p> <p>6 A No.</p> <p>7 Q Did you ever speak with anybody from the risk</p> <p>8 management department at the City about this incident,</p> <p>9 about Maggie's death?</p> <p>10 A No.</p> <p>11 Q You were part of the Sioux Falls Police Department from</p> <p>12 '95 until 2014. Were you in any way involved in the</p> <p>13 2013 drowning -- when I say "involved," I mean</p> <p>14 investigated, patrolled -- regarding Garrett Wallace</p> <p>15 and Lyle Eagle Tail --</p> <p>16 A No.</p> <p>17 Q -- and a sister?</p> <p>18 And did you have any role in providing a review of</p> <p>19 the 2013 drownings?</p> <p>20 A No.</p> <p>21 Q Are you qualified to do a risk audit or a risk</p> <p>22 analysis?</p> <p>23 A No.</p> <p>24 Q Do you think that that foam in 2018 was a hazard that</p> <p>25 caused Maggie's death?</p> | <p style="text-align: right;">Page 36</p> <p>1 Q So that they can take care of the damage? Or why do</p> <p>2 they want to know that?</p> <p>3 A I don't know.</p> <p>4 Q Do you ever forward your investigative reports or</p> <p>5 documents to risk management for purposes of making an</p> <p>6 area safer?</p> <p>7 A No.</p> <p>8 MR. SCHRANK: Mr. Bakke, I think -- may I have</p> <p>9 just two minutes to review my notes?</p> <p>10 THE WITNESS: Sure.</p> <p>11 THE VIDEOGRAPHER: Do you want to go off the</p> <p>12 record?</p> <p>13 MR. SCHRANK: Please.</p> <p>14 THE VIDEOGRAPHER: The time is 10:11.</p> <p>15 We are off the record.</p> <p>16 (Recess taken from 10:11 a.m. to 10:15 a.m.)</p> <p>17 (Exhibit 32 is marked for identification.)</p> <p>18 THE VIDEOGRAPHER: The time is 10:15.</p> <p>19 We are back on the record.</p> <p>20 BY MR. SCHRANK:</p> <p>21 Q Mr. Bakke, I'm handing you what's been marked as</p> <p>22 Exhibit No. 32.</p> <p>23 Looking at Exhibit No. 32, have you ever seen that</p> <p>24 document before?</p> <p>25 A I have.</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 Q That is the last page of <u>Exhibit 31</u> with a couple of 2 paragraphs at the end added; is that true? 3 A Yes, sir. 4 Q And those extra couple of paragraphs at the end that 5 were added, it essentially wraps up your investigation, 6 true? 7 A Yes. 8 Q And what is the last couple paragraphs? What did you 9 find out from the autopsy report, and how did that 10 affect your investigation? 11 A I found out cause and manner of death from the coroner. 12 Q And what was that? 13 A Cause of death was asphyxia due to drowning, and manner 14 of death was accident. 15 Q And then you closed your investigation after receiving 16 those? 17 A I talked with the Minnehaha County state's attorney and 18 then closed it. 19 Q And it was deemed by who that the death was accidental? 20 A The Minnehaha County coroner. 21 Q Looking back at <u>Exhibit No. 31</u>, throughout your notes 22 there's discussion about "Maggie was playing and 23 grabbing at the foam." 24 What led you to write that she was playing and 25 grabbing at the foam?</p> | <p style="text-align: right;">Page 39</p> <p>1 investigates it, from the detective bureau? 2 A It can be. 3 Q For this death was it a team? 4 A Not that day. 5 Q March 18th, you mean? 6 A Correct. 7 Q Is it true that you were the lead detective for this 8 death? 9 A Yes. 10 Q Did you discuss this death with others in the detective 11 bureau with regard to creating your theory? 12 A I don't recall specific discussions, no. 13 Q And just to be clear, your theory was that Maggie was 14 on the edge of the rocks, where foam obscured the edge 15 of the rocks; the foam was, in places, 20 to 30 feet 16 high; she reached out to grab the foam, stepped out 17 where she thought that a rock was but there was not 18 because the foam obscured the edge; she fell face 19 forward; fell in the river 3 to 4 feet below the rock 20 edge; and her shin had an abrasion from the fall 21 forward. 22 Is that true? 23 A Yes. 24 Q And it's also your theory that she was not able to see 25 the river when she fell in, she was not able to hear</p> |
| <p style="text-align: right;">Page 38</p> <p>1 A I believe Jeremy told me that she had gone up to the 2 foam to touch it and play with it. I believe that was 3 what Jeremy said at the hospital. 4 Q Do you know if she had foam in her possession 5 immediately before reaching out and grabbing foam? 6 Like, was this an instance where she reached out, 7 grabbed some foam, and then had foam and then reached 8 out and grabbed more? 9 A I -- I don't know that. 10 Q What I'm focusing on is the "playing" word. I'm just 11 trying to understand where you got that they were 12 playing by the foam, in your words. 13 A I believe the report states it was Courtney Jayne that 14 said that they had gone to the water to look at the 15 foam and play with the foam and that Jeremy was with 16 Maggie and that they had gone up there to play with the 17 foam. I believe that was Courtney. 18 Q And did Courtney tell you that at the hospital? 19 A Yes. Oh, no. I'm sorry. That's Officer Bleyenberg 20 that she told. I apologize. 21 Q Did Courtney ever tell you personally that they went 22 down to the river to play with the foam? 23 A I don't believe so. 24 Q When a death like this happens and you're tasked with 25 investigating it, is it a team along with you that</p> | <p style="text-align: right;">Page 40</p> <p>1 the river when she fell in, and she was not able to see 2 the current where she was immediately before she fell 3 in. Is that true? 4 A Correct. 5 Q In fact, it was very calm, serene, and quiet where she 6 was when she fell in? 7 A At that area of the rocks, yes. 8 Q Thank you, sir. 9 MR. SCHRANK: I have no other questions. 10 Thank you, Mr. Bakke. 11 MR. MOORE: Tim, you have a right to read the 12 transcript that the court reporter prepares, for the 13 purpose of correcting any mistakes that may have been 14 made in transcribing your testimony; or if you think 15 that you testified incorrectly about something, you can 16 change that. 17 So you can do that, or you can waive your right to 18 read and sign the transcript. It's up to you whether 19 you want to read and sign or waive. 20 THE WITNESS: I'll waive. 21 MR. MOORE: Thank you. 22 THE VIDEOGRAPHER: Are we ready to go off the 23 record? 24 MR. MOORE: Yes. 25 THE VIDEOGRAPHER: The time is 10:20. This</p> |

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1 concludes this video deposition.
2 We are off the record.

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1 STATE OF SOUTH DAKOTA
2 CERTIFICATE
3 COUNTY OF LINCOLN
4 I, Audrey M. Barbush, a Registered Professional
5 Reporter and Notary Public, do hereby certify that the
6 witness was first duly sworn by me to testify to the truth,
7 the whole truth, and nothing but the truth relative to the
8 matter under consideration; that the foregoing pages 4-41,
9 inclusive, are a true and correct transcript of my stenotype
10 notes; that the witness did waive the reading and signing of
11 the deposition transcript.
12 I further certify that I am not a relative or employee
13 or attorney or counsel of any of the parties or a relative
14 or employee of such attorney or counsel, and that I am not
15 financially interested in this action.
16 In testimony whereof, I have hereto affixed my
17 signature this 6th day of May, 2019.

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/s/Audrey M. Barbush

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